

Via Electronic Filing

The Honorable Charles R. Breyer
Northern District of California
450 Golden Gate Avenue
San Francisco, CA 94102

POWER ROGERS & SMITH, P.C.

Chicago, Illinois

Re: *In re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation*, MDL No. 2672

Dear Judge Breyer:

Please accept this letter with attachments, résumé and list of supporting counsel and firms, as my application for the Plaintiffs' Steering Committee in the above matter, for car owners and lessees. My firm and I have been actively involved in this matter from the beginning. We were retained and first filed a cause of action on 9/23/15. We have now been retained by a number of other U.S. consumers, both owners and lessees. Before the recent JPML hearing, I was invited by the American Association for Justice, (AAJ) formerly ATLA, to speak at their seminar in December in New Orleans on issues raised by the Volkswagen litigation. We presented to lawyers representing consumers from all over the country. We believe – as do the firms that support our application – that we are more than capable of serving as a member of the plaintiffs' steering committee (PSC) (Please see Attachment A for a list of attorneys and firms supporting our application). As detailed below, my firm and I believe we have the experience, resources and capacity to serve on the PSC on behalf of all plaintiffs.

I started my career as a trial lawyer after receiving my MBA from Northwestern University and my JD from Loyola University of Chicago, as an Assistant Cook County Public Defender. I have since practiced in all areas of tort law, including extensively in product liability law, in particular automotive and aeronautical product liability, for nearly 36 years. Currently, I am Co-Lead Counsel for the Economic Loss Track in *In Re: Takata Airbag Products Liability Litigation*. I also serve as co-lead counsel in *Price v. Phillip Morris Inc.*, No. 117689, a class action judgment relating to the sale of light cigarettes. In addition, I serve as co-lead counsel in *Chultem/Colella, et al. vs. Titor Title Co., and Chicago Title Co.*, a class action/consumer fraud, arising out of kickbacks made by title companies in Illinois real estate transactions. A list of these and other representative matters, with judicial contact information, is contained on the second page of my résumé in an effort to respond to criteria 1, 2 and 8 of this Court's order.

I have been involved in dozens of product liability cases over my career, including cases against nearly every major automotive manufacturer. Additionally, on behalf of consumers and individuals, I have successfully pursued cases involving, among others, such national and international corporate entities as Boeing, United Airlines, Agusta-Westland, Kubota Tractor Corporation, Beechcraft, McDonnell Douglas, Daher-Socata, Honeywell, Michelin, Wyeth, Johnson & Johnson, GE and Zimmer.

I have also handled a wide variety of other types of matters. Individual economic loss matters include a verdict of \$17.6 million for an individual suing his accountants, KPMG, in a complex financial case for professional negligence arising out of billions of dollars in bond trading; a multimillion dollar recovery from a hedge fund and its nationally known law firm, for an investor in the fund, which was essentially a Ponzi Scheme; and finally, what hopefully expresses the confidence of, at least some in the Illinois Judiciary, with my partner, Joseph A. Power, Jr., obtaining a record \$7 million dollar defamation verdict for a sitting Illinois Supreme Court Justice, the Honorable Robert R. Thomas.

Your Honor referenced the involvement of Kenneth M. Feinberg in this case and his participation in a number of other national matters. I am a past president of Illinois State Bar, the Illinois Trial Lawyers and ATLA, now AAJ. In my leadership role in ATLA/AAJ, in September of 2001, I was proud to be involved in the creation and management of Trial Lawyers Care (TLC). TLC was formed and dedicated to give pro bono legal services

to any family wishing to pursue justice through the September 11th Victim Compensation Fund, which we lobbied Congress to create as well. I served on the Board of Directors of TLC and was Chairman of its Development Campaign. Through my work with TLC, I worked with Special Master Kenneth M. Feinberg to ensure that families of victims of the tragic events of 9/11 received just compensation. By its conclusion, and during my time as President, TLC provided over 1,100 lawyers for representation to over 1,700 victim's families, and provided over \$200 million in legal services free of charge. It was the largest pro bono legal representation project in history. The efforts of those involved with TLC was documented in a report to Congress entitled *Thousands of Heroes: The Rest of Us Could Only Help* along with a DVD about the project featuring Special Master Feinberg and Associate Justice Stephen G. Breyer. (See Attachment B, January 2005 letter). Through my work on behalf of various organizations, including TLC and ATLA and through now almost 39 years as a trial lawyer, I believe I have demonstrated a willingness and ability to work cooperatively with other attorneys on both sides of complex litigation and beyond.

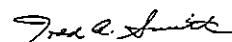
I am quite proud of the TLC effort, but also of accomplishments as a practicing plaintiff's trial lawyer in our courts. I have been fortunate to be recognized in publication rankings as a top trial lawyer. In 2011, I was designated by Best Lawyers in America's publication as Mass Tort Lawyer of the year. In 2015, at the AAJ Montreal Convention, I received The Leonard M. Ring Champion of Justice Award, their highest honor. In October 2015, I was honored to receive the Distinguished Award for Excellence from the Illinois State Bar Association Foundation. The Award recognizes the recipient's contributions to the law and society. Other past recipients I was proud to join include Newton N. Minow and Illinois Supreme Court Justice Anne M. Burke.

I currently serve on the Board of the National Center for State Courts. I also am proud to have been asked to serve on the Conference of Chief Justices (CCJ) – Civil Justice Initiative- a project focused on implementing improvements in access to justice for the citizens of the 50 states.

Our firm, Power, Rogers & Smith, P.C. was founded in 1993, and is located in Chicago, Illinois. It is a diverse firm, including our co-founding and name partner, Larry R. Rogers, Sr., a past president of the Cook County Bar Association, the largest local African American Bar in the U.S. Power Rogers & Smith, P.C. is consistently listed at the top of Chicago trial firms. Its name partners have long been listed by the well regarded "Best Lawyers in America" publication. My partner, Joseph A. Power, Jr., and I are members of the Inner Circle of Advocates; a by invitation only organization limited to 100 of the nation's best plaintiff lawyers. We are also both Fellows in the International Academy of Trial Lawyers, as well as the American College of Trial Lawyers. In addition to the capabilities as trial counsel, the firm has the resources to make the financial commitments required by this MDL. Power Rogers & Smith, P.C. has recovered over \$3 billion dollars in verdicts and settlements. Power Rogers & Smith, P.C. has finished at the top of the Chicago Lawyer (publication) Annual Settlement Survey - tracking compensation obtained for clients - in ten of the last sixteen years, and has held that first position for the last six consecutive years. Among our many record awards is the highest compensation in a medical malpractice verdict of \$55.4 million dollars, as well as a record recovery of \$100 million dollars for a case involving the wrongful death of six children in a combined trucking and product liability case. Our investigation, resulting from this case, supplied to the Federal Government, led to over 70 federal criminal convictions in a trucking license for bribes scandal. Firm cases have also resulted in widespread societal benefits including: the retesting of over 2000 truck drivers; product recalls; and a federal regulation championed ultimately by then President William J. Clinton, requiring hospital personnel to assist people in need of care within a reasonable distance or the sight of the hospital entrance.

Thank you, your Honor, for your consideration.

Respectfully submitted,



Power, Rogers & Smith, P.C.

TODD A. SMITH

EDUCATION Kansas University, Lawrence, Kansas, B.S.B. - 1971
Northwestern University Graduate School of Business, Evanston, Illinois, M.B.A. - 1973
Loyola University School of Law, Chicago, Illinois, J.D. - 1976

PARTNER Power Rogers & Smith Chicago, Illinois, 1993-present

APPOINTMENTS Lawyers Trust Fund of Illinois, 2000 – 2006
(Partial Listing) Special Supreme Court Committee on Illinois Evidence 2008 – present (just reappointed)
Office of the Cook County Public Defender Advisory Board 2009 -present

HONORS The Best Lawyers in America, 1997-present
(Partial listing) Best Lawyers in America, Lawyer of the Year, 2012 - Medical Malpractice
Best Lawyers in America, Lawyer of the Year, 2011 – Mass Torts
Damen Award in Law – Loyola University of Chicago – Founders' Day 2002
Chicago Lawyer Magazine - Person of the Year - 1998
The Medal of Excellence Award - Loyola University - 2005
American Association for Justice - Lifetime Achievement Award – 2009
Senator Paul Wellstone Award – 2012
American Association for Justice – Leonard M. Ring Champion of Justice Award - 2015
Illinois State Bar Foundation Award of Excellence in 2015

BOARDS OF DIRECTORS AND TRUSTEESHIPS

(Partial listing) Roscoe Pound Foundation, 1999-present
ATLA (AAJ) Endowment, 1999-present
Trial Lawyers Care, 2001-2006 (pro bono effort for families of 9/11 victims)
Public Justice Foundation, 2008 -present; Executive Committee, 2012 -present
Center for Constitutional Litigation, 2012 -present
National Center for State Courts 2013 – present
American Board of Trial Advocates (ABOTA) (National) – 2015-

MEMBER Illinois Bar, 1976
(Partial Listing) U.S. Supreme Court, 1990
U.S. Court of Appeals, Seventh Circuit, 1991
U.S. District Court, Northern District of Illinois, 1980
Washington D.C. Bar, 2012

FELLOWSHIPS American Bar Foundation, Fellow, 1996-present
American Board of Trial Advocates, Fellow, 1999-present
American College of Trial Lawyers, Fellow, 1996-present
International Academy of Trial Lawyers, Fellow, 1998-present
International Society of Barristers, Fellow, 1996-present
Inner Circle of Advocates, Member, 2005-present

ASSOCIATIONS American Association for Justice,
(Partial listing) Several leadership positions including President, 2004-2005
Illinois State Bar Association
Several leadership positions including President, 1997-1998
ISBA Mutual Insurance Company

Several leadership positions including Chairman of the Board, 1999-2000
Illinois Trial Lawyers Association
Several leadership positions including President, 2010

TEACHING, LECTURING AND AUTHORSHIP

(Summary listing) 163 Presentations; 73 Articles

REPRESENTATIVE CASES – Mr. Smith has tried more than 100 cases to verdict and judgment. These cases have often been complex areas of law, such as product liability, class action, medical malpractice, aviation, financial fraud and consumer protection where his graduate business education (MBA) has been of value. The list below is a short illustration of some of the breadth and depth of his experience.

In Re: Takata Airbag Products Liability Litigation, MDL No. 2599 (S.D. Fl.) – This class action cases arises out of defective airbags manufactured by Takata and installed in the vehicles of 10 major automobile manufacturers. I serve as Co-Lead Counsel for Economic Loss Claims. Judge Federico A. Moreno, 400 N. Miami Ave., Miami FL 33128 (305) 523-5110

Price, et al, v. Philip Morris Inc., No. 117687 (Ill. Sup. Ct. 2005) - The class action matter arises out of fraudulent marketing of light cigarettes. A 10.1 billion dollar judgment was awarded, and the case is currently pending in the State of Illinois. Illinois Supreme Court Justice Thomas L. Kilbride, 1819 Fourth Ave., Rock Island, IL 61201 (309) 794-3608

Sprietsma, et al, v. Mercury Marine, et al, 537 U.S. 51 (2002)- This case arose out of serious injury and death caused by lack of propeller guard on a power boat. The United States Supreme Court found that state law was not preempted by federal regulations or lack thereof overturning the Illinois Supreme Court's decision. Judge Joseph N. Casciato (Ret.), 20 N. Clark Street, Chicago, IL 60602 (312) 960-2260

Russell, et al, v. SNFA, Supreme Court No. 113909 (Ill. Apr. 18, 2013) - This case arises out of the failure of a SNFA manufactured tail rotor drive shaft bearing in an Agusta (Italian) helicopter which caused it to crash. The Illinois Supreme Court found jurisdiction to exist over a foreign manufacturer, SNFA (French), under the stream of commerce theory of personal jurisdiction. It was the first personal jurisdiction case decided by the Illinois Supreme Court in twenty-five years. Illinois Supreme Court Justice Mary Jane Theis, 160 N. LaSalle Street, Chicago, IL 60601 (312) 793-5460

Biefeldt v. KPMG LLP, App. 00 MR 44 (Peoria County, Ill.) – This case arose out of negligent tax/financial consulting provided to individual engaged in trading government securities with mainly primary dealers. Complex economic, and tax loss claims, were alleged relating to the distinction in the tax code between traders, investors and brokers. A jury in Peoria County, Illinois awarded damages in the amount of 17.6 million dollars. Illinois Appellate Court Justice (3rd District) William E. Holdridge, 1004 Columbus Street, Ottawa, IL 61350 (815) 434-5050

Chultem/Colella, et al, vs. Titor Title/Chicago Title, et al, No. 1-14-0808 & No. 1-14-0820 (Ill App. Ct. 2010) - This class action arises out of title company kickbacks in violation of federal and state law. The case involves complex economic loss claims in excess of 300 million dollars. The case was tried in 2013, and is currently on appeal in the State of Illinois. Illinois Appellate Court Justice Aurelia Pucinski, 160 N. LaSalle Street, Chicago, IL 60601 (312) 793-5407

Thomas v. The Kane County Chronicle, et al., No. 04 LK 013 - This case arises out of a Chicago area news organization through one of its papers making false claims regarding conduct of a sitting Illinois Supreme Court Justice. I and my partner tried this defamation case to a \$7 million jury verdict for Justice Robert R. Thomas, 1776 S. Naperville Road, Wheaton, IL 60189 (630) 871-0025.